IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K.SAMPATHKUMAR

H.C.P.NO. 696 OF 2006

Suneka,
W/o. Sheriff Mohamed Ali
(a) Jamal (a) Sheriff .. Petitioner

Vs.

1. State of Tamil Nadu
   Rep. by its Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the entire records related to my husband's detention under Tamil Nadu Act 14 of 1982 vide detention order 17.06.2006 on the file of the second respondent made in proceedings BDFGISV No.151 of 2006, quash the same as illegal and consequently direct the respondents to produce the said Petitioner's husband namely Sheriff Mohamed Ali (a) Jamal (a) Sheriff before this Court and set the petitioner's husband at liberty from detention.

For Petitioner : Mr. Abudukumar Rajaratinam

For Respondents : Mr.P. Kumaresan,
Addl. Public Prosecutor

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O R D E R

(The order of the Court was made by P.K. MISRA, J)

Heard Mr. Abudukumar Rajaratinam for the petitioner and Mr.P. Kumaresan, Additional Public Prosecutor for the respondents.

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2. The Habeas Corpus Petition has been filed by the wife of the detenu, who has been detained under Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

3. In the grounds of detention, reference has been made to the order of conviction of the detenu on 29.10.2001 under Sections 4(1) and 8 (a) of the Immoral Traffic (Prevention) Act, 1956. There is also reference to alleged involvement of the detenu in Anti Vice Squad P.S. Cr.No.37 of 2006 registered under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of ITP Act. Besides the aforesaid two adverse cases, the order of detention is based on the alleged involvement of the detenue in Anti Vice Squad P.S. Cr.No.44 of 2006 registered under Sections 3(1), 4(1), 5(1), 6 (1) and 7(1) of ITP Act. In paragraph 4 of the grounds of detention, the detaining authority has referred to as under :-

> "4. I am aware that Thiru Sheriff Mohammed Ali @ Jamal @ Sheriff is in remand in Anti Vice Squad Police Station Crime No.44/2006 and he has moved two bail applications before the Principal Sessions Court, Chennai in Crl.M.P.Nos.4007/2006 and 4050/2006 and the same are pending. I am also aware that there is very likely of his coming out on bail in the above case since in similar cases bails are granted by the same Court or Higher Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of pubic order. On the materials placed before me, I am fully satisfied that the said Thiru Sheriff Mohamed Ali @ Jamal @ Sheriff is an Immoral Traffic Offender and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

4. The contention, which is raised before this Court, on behalf of the petitioner is to the effect that even though the detaining authority has referred to the applications for bail filed in connection with Anti Squad Police Station Cr. No.44 of 2006 (ground case) and concluded that such person is likely to be released on bail, there is no reference to the fact that detenu was in custody in connection with adverse case, namely, Anti Squad Police Station Crime No.37 of 1996, wherein it was alleged that the detenu has committed similar offences. Learned counsel for the petitioner submitted that this clearly indicates non-application of mind on the part of the detaining authority and the order of detention is therefore vitiated. Learned counsel for the

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petitioner has relied upon the decisions reported in 2006(1) CTC 340 (BALASUBRAMANIAN @ SUBRAMANIAN @ SUBBUDU @ SUBBU v. THE COMMISSIONER OF POLICE, MADURAI CITY AND ANOTHER) and 2004 MLJ (Crl) 829 (ANJALAMMAL v. THE STATE OF TAMIL NADU AND OTHERS).

5. Learned Additional Public Prosecutor appearing for the State, on the other hand, has submitted that even though there is no specific reference to filing of any bail application in connection with Crime No.37 of 2006, since the offences committed on both the occasions are similar and since there is reference to commission of the offence in Cr.No.44 of 2006, it must be taken that the detaining authority was aware of the alleged involvement of the detenu in earlier case and cannot be said that there has been non-application of mind.

6. Non-application of mind is on account of the fact that the detenu has been remanded in connection with two cases, but the detaining authority has referred to the possibility of the detenu being released on bail by referring to the bail Applications Crl.M.P.Nos.4007 & 4050 of 2006, which had been filed in Cr.No.44 of 2006. In other words, the detaining authority has not at all considered the possibility of the detenu being released in other case. Even if bail order would have been passed in Cr.No.44 of 2006, the detenu would be still detained in prison as no bail application had been filed in connection with the earlier case, i.e., Cr.No.37 of 2006. The detaining authority has not at all applied his mind to the aforesaid aspect. As a matter of fact, almost on similar circumstances, the Division Bench in 2006(1) CTC 340 (cited supra) had quashed such detention on account of the fact that the detaining authority had only referred to filing of bail application in one crime and there is no reference to filing of bail application in connection with other similar crime.

7. In view of the aforesaid, we are constrained to quash the order of detention, even though the allegations against the detenu were quite serious in nature and the detenu alleged to be a habitual offender. The Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

dpk

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To

1. The Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,Chennai.

3. The Superintendent
   Central Prison,
   Chennai.

4. The Joint Secretary to Govt.,
   Public (Law and Order)
   Fort St.George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

1 cc To Mr.C.C.Chellappan, Advocate, SR.50785.

ORDER IN HCP.NO.696/2006

SSV(CO)
RVL 12.12.2006

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